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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DIEGO SOLIS SANTOS,
[redacted]
Petitioner,

v.

JESSICA SAGE, *in her official capacity as Warden of FCI Lewisburg*; MICHAEL T. ROSE, *in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Philadelphia Field Office*; and KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*,

Respondents.

Case No.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

Petitioner Diego Solis Santos ("Petitioner" or "Diego") respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, as follows:

INTRODUCTION

1. Diego is a 21-year-old noncitizen from El Salvador who was designated an unaccompanied minor at the time of his entry to the U.S. in May 2021. Diego has now been detained for over ten months in the custody of the United States Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"). He is currently detained in ICE custody at FCI Lewisburg.

2. Diego initially entered the United States without inspection in May 2021, at age 17. Ex. A, Notice to Appear ("NTA"). He was apprehended by Customs and Border Patrol ("CBP") on May 15, 2021 and processed as an unaccompanied minor. He was taken into immigration custody and transferred to the Office of Refugee Resettlement ("ORR") pursuant to the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 8 U.S.C. § 1232. Ex. B, Form I-213 Record of Deportable/Inadmissible Alien ("I-213"). He was released on June 17, 2021 on an Order of Release on Recognizance ("OREC") to his sponsor, his cousin who lived in New Jersey. *Id.*

3. On March 4, 2025, when Diego was released from custody of Camden County, New Jersey after being acquitted of all charges in Camden Superior

Criminal Court Case [redacted], Diego was detained by ICE and issued a Notice to Appear ("NTA") charging him as removable under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien who has not been admitted or paroled. Ex. A, NTA; Ex. C, Judgment of Acquittal for Camden Superior Criminal Court Case [redacted] ("Judgment of Acquittal").

4. Diego was detained by ICE at the Moshannon Valley Processing Center until about January 22, 2026, when he was transferred to ICE detention at FCI Lewisburg. Diego has never had a bond hearing conducted by a neutral decisionmaker—a federal judge or an immigration judge—to determine whether his detention is warranted based on danger or flight risk. He is now ineligible for release on bond pursuant to the Board of Immigration Appeals' ("BIA") recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), issued on May 15, 2025, and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), issued on September 5, 2025.

5. These decisions, which hold that 8 U.S.C. § 1225(b)(2) makes noncitizens like Diego, who are apprehended in the United States but have never been admitted, subject to mandatory detention without a bond hearing, including designated unaccompanied minors, violate both 8 U.S.C. § 1226(a) and 8 U.S.C. § 1232. Instead, 8 U.S.C. § 1226(a) applies and authorizes release on bond after a hearing before an immigration judge. As scores of federal district courts have held, the BIA's interpretation conflicts with the plain language and structure of the statute,

as well as the greater statutory scheme, the legislative history of the relevant provisions, and decades of consistent agency practice. *See, e.g.*, *Patel v. O'Neil*, 2025 WL 3516865, at *4 (M.D. Pa. Dec. 8, 2025) (describing this as the position of the "overwhelming majority of federal districts"); *Bethancourt Soto v. Soto*, 2025 WL 2976572, at *7 (D.N.J. Oct. 22, 2025) (collecting cases). This is underscored by the TVPRA's requirement that even after designated unaccompanied minors turn 18, ICE "consider placement in the least restrictive setting available" and that these adults "shall be eligible for alternatives to detention." 8 U.S.C. § 1232(c)(2)(B); *see Ramirez v. U.S. Immigr. & Customs Enf't*, 338 F. Supp. 3d 1, 28 (D.D.C. 2018).

6. Therefore, the application of 8 U.S.C. § 1225(b)(2) to Petitioner is contrary to law and violates the Immigration and Nationality Act ("INA"), the TVPRA, and the Administrative Procedure Act ("APA").

7. Additionally, even if § 1225(b)(2) does authorize Petitioner's detention without a bond hearing, his current detention without any pre- or post-deprivation process violates his right to procedural due process. The *Mathews v. Eldridge* balancing test applies to determine "what due process requires when faced with immigration detention due process claims." *Contreras Maldonado v. Cabezas*, 2025 WL 29852656, at *5 (D.N.J. Oct. 23, 2025) (citing *Mathews*, 424 U.S. 319 (1976)); *see also Gayle v. Warden Monmouth C'ty Corr. Facility*, 12 F.4th 321, 331 (3d Cir.

2021) (same). Here, this analysis shows that more process is due to justify Petitioner's continued detention.

8. Finally, in the alternative, Petitioner's prolonged detention of over nine months without the opportunity for a hearing violates due process. *See German Santos v. Warden Pike C'ty Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020).

9. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order his release, conduct a bond hearing, or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and/or dangerousness by clear and convincing evidence and; (2) the reviewing court considers alternatives to detention that could mitigate risk of flight. *See id.* at 213-14.

PARTIES

10. Petitioner Diego Solis Santos is a noncitizen currently detained by Respondents pending removal proceedings.

11. Respondent Jessica Sage is the Warden of FCI Lewisburg. Respondent Sage is the immediate custodian of Petitioner. Petitioner brings this action against Respondent Sage in her official capacity.

12. Respondent Michael T. Rose is the Acting Field Office Director of the ICE Enforcement and Removal Operations ("ERO") Philadelphia Field Office. In that capacity, he is charged with overseeing all ICE detention centers in

Pennsylvania, Delaware, and West Virginia and has the authority to make custody determinations regarding individuals detained there. Respondent Rose is a legal custodian of Petitioner. Petitioner brings this action against Respondent Rose in his official capacity.

13. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). DHS oversees ICE, which is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for and authority over the detention and removal of non-citizens throughout the United States. Respondent Noem is the ultimate legal custodian of Petitioner. Petitioner brings this action against Respondent Noem in her official capacity.

JURISDICTION AND VENUE

14. This action arises under the Fifth and Fourteenth Amendments to the U.S. Constitution, the INA, and the TVPRA.

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

16. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against one of its agencies and that agency's officers are sued in their official capacities. *See* 5 U.S.C. § 702.

17. Venue is proper in this District because the Petitioner is detained at FCI Lewisburg in Union County, Pennsylvania, located in the Middle District of Pennsylvania. 28 U.S.C. § 1391; *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).[1]

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003). Any requirement of administrative exhaustion is therefore purely discretionary. *See Santos v. Lowe*, No. 1:18-cv-1553, 2020 WL 4530728, at *2 (M.D. Pa. Aug. 2020) ("[T]he exhaustion requirement imposed by courts relating to habeas corpus petitions filed by immigration detainees is a prudential benchmark which is not compelled by statute.").

19. Prudential exhaustion is not warranted here, given the need for immediate judicial review. "Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas

[1] Diego petitioned the Western District of Pennsylvania for a writ of habeas corpus on December 15, 2025. *Solis Santos v. Oddo*, No. 3:25-522 (W.D. Pa.). That petition was voluntarily dismissed prior to the government's response.

corpus is more urgent." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).

20. Moreover, the exhaustion "doctrine is not without exception." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 666. (D.N.J. 2003). "Courts have found that the exhaustion of administrative remedies may not be required when available remedies provide no opportunity for adequate relief, an administrative appeal would be futile, or if plaintiff has raised a substantial constitutional question." *Id.* at 666-67.

21. The BIA has issued a published decision holding that people like Diego who entered the United States without inspection, including designated unaccompanied minors, are ineligible for bond pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 216. Immigration judges and the BIA are bound by this decision. 8 C.F.R. § 1003.1(g)(1).[2] Exhaustion before the agency would therefore be futile.

22. Further, neither the Immigration Judge (IJ) nor the BIA have jurisdiction to adjudicate constitutional issues. *Qatanani v. Att'y Gen. of the U.S.*, 144 F.4th 485, 500 (3d Cir. 2025); *see also Ashley*, 288 F. Supp. 2d at 667. Therefore, administrative proceedings would be futile as petitioner raises due

[2] While *Maldonado Bautista* class members are currently exempt from such treatment pursuant to nationwide injunction, Petitioner does not purport to be a Maldonado Bautista class member. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.)

process claims. *Qatanani*, 144 F.4th at 500; *see also Contreras Maldonado*, 2025 WL 2985256 at *6 (waiving exhaustion where BIA could not provide petitioner with relief on due process claim where there was "no doubt that [she] was not afforded an individualized assessment before she was detained").

STATEMENT OF FACTS

23. Petitioner Diego Solis Santos is a citizen of El Salvador who entered the United States without inspection as an unaccompanied child on May 15, 2021, when he was 17, after fleeing death threats from the Salvadoran gang [redacted]. *See* Ex. A (NTA), Ex. B (I-213).

24. Diego was apprehended by CBP after entering the U.S. on May 15, 2021 and processed as an unaccompanied minor. He was taken into custody of ORR pursuant to the TVPRA, 8 U.S.C. § 1232. Ex. B.

25. He was released on June 17, 2021 on an Order of Release on Recognizance ("OREC") to his sponsor, his cousin who lived in New Jersey. Ex. B.

26. No NTA was issued or served on immigration court at that time. *Id.*

27. On March 28, 2022, Diego turned 18.

28. On June 6, 2023, Diego was arrested in Camden County for charges of aggravated assault with a weapon and attempted murder in Camden Superior Court Case [redacted]. He was interviewed by ICE at the Camden County Jail on the day of his arrest. *Id.*

29. On March 4, 2025, Diego was released from pre-trial detention at the Camden County Jail after being acquitted of all charges after trial by jury.[3] Upon release, Immigration and Customs Enforcement (ICE) in Mount Laurel, NJ detained Diego and issued an NTA charging him as removable under 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen who has not been admitted or paroled. Ex. A, NTA.[4]

30. Diego was transferred to ICE custody at the Moshannon Valley Processing Center in Philipsburg, Pennsylvania, where he was detained until he was transferred to FCI Lewisburg on about January 22, 2026.

31. Diego's NTA was filed with the Elizabeth Immigration Court on March 12, 2025. *Id.*

32. Diego appeared *pro se* at a master calendar hearing on March 25, 2025 before Immigration Judge Adam Panopoulos ("IJ Panopoulos").

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[3] In addition to the charges for which Diego proved his innocence at trial, Diego has an arrest in Brooklyn, New York on April 21, 2023 for a charge that was dismissed, and a conviction under NJSA § 2C:39-5d for possession of a sharpened toothbrush during his pretrial detention in the Camden County Jail on August 29, 2023.

[4] Petitioner does not have a conviction for an offense enumerated in 8 U.S.C. § 1182(a)(2) or § 1182(a)(3)(B), and therefore is not subject to mandatory detention under 8 U.S.C. § 1226(c). Should the Department of Homeland Security argue that Petitioner is subject to mandatory detention under § 1226(c), he would be entitled to a hearing on that issue before an immigration judge (*Joseph* hearing). *See Matter of Joseph*, 22 I. & N. Dec. 799, 800 (B.I.A. 1999).

33. At Diego's second master calendar hearing on April 15, 2025 before Immigration Judge Adam Panopoulos, Legal Services of New Jersey entered as counsel in Diego's case. Diego's case was continued for a master calendar hearing for pleadings and filing of relief applications on May 22, 2025.

34. While Diego's counsel was preparing Diego's relief application, and before counsel could prepare Diego's bond application, on May 15, 2025, the BIA issued a precedential decision in *Matter of Q Li*, 29 I&N Dec. at 66, that stripped the immigration court of jurisdiction to hold a bond hearing in Diego's case.

35. At Diego's third master calendar hearing on May 22, 2025 before Immigration Judge Adam Panopoulos, Diego through counsel entered pleadings and filed Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). His case was scheduled for an individual hearing on August 13, 2025.

36. At Diego's August 13, 2025 individual hearing before IJ Panopoulos, Diego testified on direct examination for the over two-hour time slot allotted by the Court. The case was scheduled for a continued individual hearing on September 17, 2025 for Diego's cross examination and redirect and for the testimony of fact and expert witnesses.

37. On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. at 216, which further expanded mandatory

detention and affirmed that the immigration court had no jurisdiction over a custody redetermination in Diego's case.

38. At Diego's continued individual hearing before IJ Panopoulos on September 17, 2025, testimony was completed and the evidentiary record was closed. Diego's case was scheduled for an oral decision on September 24, 2025.

39. On September 24, 2025, however, the Court was not ready to issue a decision and continued the case for the imminent issuance of a written decision. Petitioner anxiously awaited the issuance of the decision for over nine weeks, during which time undersigned Counsel periodically contacted the Elizabeth Immigration Court requesting that a decision be issued. DHS Counsel also contacted the Elizabeth Immigration Court to request that a decision be issued, however, it declined undersigned counsel's request to consider a release request or concede the immigration court's jurisdiction to hold a bond hearing. Ex. D (November 13, 2025 email from Assistant Chief Counsel Matthew Doll to undersigned counsel).

40. On November 28, 2025, over two months after the conclusion of Diego's case, Immigration Judge Dennis Ryan, who did not preside over Diego's hearings, issued a 25-page written decision denying Diego's applications for asylum, withholding of removal and CAT and ordering Diego removed. Ex. E (IJ decision and order dated November 28, 2025).

41. Undersigned counsel filed a timely Notice of Appeal to the Board of Immigration Appeals ("BIA"), arguing that the IJ's decision and order is based on legal error and violations of Diego's regulatory, statutory, and constitutional due process rights. *Id.* The BIA has yet to issue the transcript and briefing schedule. Diego will remain in pre-final order custody during the pendency of his BIA appeal.

42. Diego remains detained in ICE custody at the FCI Lewisburg without access to a hearing conducted by a neutral decisionmaker—a federal judge or an immigration judge—to determine whether his detention is warranted based on danger or flight risk

LEGAL FRAMEWORK

I. 8 U.S.C. 1226(a) Governs the Detention of People Like Petitioner, Who Are Detained in the United States and Have Not Previously Been Admitted

43. The INA contains several provisions authorizing detention of noncitizens. Section 1226(a) entitles most noncitizens with pending removal proceedings to a hearing before an Immigration Judge to determine whether they should be released on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). Section 1226(c) creates an exception to section 1226(a) and provides that noncitizens who are removable by virtue of certain criminal convictions must be detained without a bond hearing. Section 1225(b) provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent

arrivals "seeking admission" under (b)(2). Finally, section 1231 governs the detention of noncitizens with a final order of removal.

44. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025). "Upon passing IIRIRA, Congress declared that the new Section 1226(a) 'restates the current provisions in the predecessor statute,'" which allowed noncitizens who entered without inspection to be released on bond. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210).

45. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens

who entered without inspection) will be eligible for bond and bond redetermination.").

46. Thus, in the decades that followed, most people who entered without inspection were considered eligible for release on bond and for bond hearings before an IJ, unless their criminal history rendered them ineligible. *Diaz Martinez v. Hyde*, 792 F. Supp. 3d 211, 217 (D. Mass. 2025); *accord Rivera Zumba v. Bondi*, 2025 WL 2753496, at *9 (D.N.J. Sept. 26, 2025). That was consistent with pre-IIRIRA practice, in which noncitizens who had entered without inspection were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994).

47. In recent months, Respondents have abruptly changed course. On May 15, 2025, the BIA issued a decision holding that any noncitizen who entered without inspection and was apprehended and paroled near the border was subject to mandatory detention under § 1225(b)(2)(A) when her parole was terminated and she was re-detained. *Matter of Q. Li*, 29 I&N Dec. at 70.

48. On July 8, 2025, ICE Director Todd M. Lyons issued an internal memorandum stating that, "in coordination with the Department of Justice (DOJ)," DHS had "revisited" its legal position and believed that § 1225, not § 1226, governs the detention of noncitizens who are present in the United States without having been admitted. *Diaz Martinez*, 792 F. Supp. 3d at 218.

49. On September 5, 2025, the BIA followed suit and issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. at 216. The BIA held that noncitizens "who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I&N Dec. at 220.

50. Both before and after the Board's decision in *Yajure Hurtado*, scores of federal courts have rejected the government's new interpretation of § 1225(b)(2) and instead held that people who are present without having been admitted are eligible for bond pursuant to § 1226(a). *See, e.g.*, *Paredes Quispe v. Rose*, 2025 WL 3537279 (M.D. Pa. Dec. 10, 2025); *Santana-Rivas v. Warden Clinton C'ty Corr. Facility*, 2025 WL 3513152 (M.D. Pa. Dec. 8, 2025); *Juarez Velazquez v. O'Neill,* 2025 WL 3473363 (E.D. Pa. Dec. 3, 2025); *Nogueira-Mendes v. McShane*, 2025 WL 3473364 (E.D. Pa. Dec. 3, 2025); *R.A.A. v. Warden*, 2025 WL 3464915 (M.D. Ga. Dec. 2, 2025); *Godinez-Lopez v. Ladwig*, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025); *Mena Torres v. Wamsley*, 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025); *Garcia Domingo v. Castro*, 2025 WL 2941217 (D.N.M. Oct. 15, 2025); *Perez v. Berg*, 2025 WL 2531566, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1152 (D. Minn. 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 491 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D.

Ariz. Aug. 11, 2025); *Diaz Martinez*, 792 F. Supp. 3d at 222; *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez*, 779 F. Supp. 3d at 1257.

51. As these decisions explain, the reasoning and holding of *Matter of Yajure Hurtado* defies the INA. The plain text of the statute shows that § 1226(a), not § 1225(b), applies to people like Petitioner.

52. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing 1226(a) as the "default rule" for people detained pending removal). These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

53. Section 1226 explicitly applies to people charged as inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies.

Rodriguez, 779 F. Supp. 3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

54. Under the BIA's interpretation, all noncitizens subject to inadmissibility grounds are detained without the opportunity for a bond hearing under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I&N Dec. at 220; *see* 8 U.S.C. § 1182(a)(6) (making people who are present without having been admitted inadmissible); 8 U.S.C. § 1101(a)(13) (defining an admission). Therefore, this interpretation would render all the grounds of mandatory detention in § 1226(c) applying to inadmissible noncitizens, including the recently-passed Laken Riley Act, superfluous. *Gomes*, 2025 WL 1869299, at *7; *Rodriguez*, 779 F. Supp. 3d at 1258; *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2103) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). This statutory structure demonstrates that Congress did not intend to make § 1226(a) inapplicable to all inadmissible noncitizens, but rather viewed it as the default bond provision for people arrested within the United States.

55. By contrast, § 1225(b) is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A); *see also Diaz Martinez*, 792 F. Supp. 3d at 222 ("'[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking

admission . . . and those who are within the United States after an entry, irrespective of its legality.'" (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287 (2018).

56. The BIA's interpretation "would render the phrase 'seeking admission' in 8 U.S.C. § 1225(b)(2)(A) mere surplusage." *Lopez Benitez*, 795 F. Supp. 3d at 487. That section applies to people who are (1) applicants for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A); *Lopez Benitez*, 795 F. Supp. 3d at 487-88; *Diaz Martinez*, 792 F. Supp. 3d at 218. The BIA's interpretation makes all applicants for admission subject to mandatory detention, leaving the "seeking admission" criterion unnecessary and violating the rule against surplusage. *Lopez Benitez*, 795 F. Supp. 3d at 488; *Diaz Martinez*, 792 F.3d at 218.

57. Instead, the phrase "seeking admission" indicates that § 1225(b)(2)(A) applies to people who are taking "some sort of present-tense action," in other words, coming or attempting to come into the United States. *Diaz Martinez*, 792 F.3d at 218; *see also Matter of M-C-D-V-*, 28 I&N Dec. 18, 23 (BIA 2020) (stating that "the use of the present progressive tense . . . denotes an ongoing process"). Therefore,

§ 1226(a), not § 1225(b)(2)(A), governs the detention of people detained within the United States who are not actively seeking admission, as required by the statute. *See Rivera Zumba*, 2025 WL 2753496 at *8.

58. Applying § 1226(a), rather than § 1225(b), to people who entered without inspection is consistent with the government's contemporaneous and previously consistent understanding of the statute, which "can inform a court's determination of what the law is." *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024). This longstanding practice further counsels against the BIA's abrupt change in policy. *Maldonado*, 795 F. Supp. 3d at 1150.

59. Finally, as discussed below, the BIA's interpretation of § 1225(b)(2)(A) to mandate detention without a bond hearing for all noncitizens present in the United States without having been admitted presents serious constitutional concerns. Therefore, to the degree that the statute remains ambiguous, the Court should presume that Congress "did not intend the alternative which raises serious constitutional doubts" and reject that construction. *Clark v. Martinez*, 543 U.S. 371, 381-82 (2005). Therefore, § 1226(a), which permits bond hearings, not § 1226(b)(2)(A), which does not, governs the detention of people like Petitioner.

II. The TVPRA Governs the Detention and Release of Unaccompanied Children

60. Because Petitioner was released from ORR custody after being designated an unaccompanied child, there is an additional basis for concluding that

§ 1225(b) does not govern his detention. The statutory scheme described below further supports his position that immediate release is the appropriate remedy here. *See Garcia Sandoval v. Rokosky*, 2025 WL 3204746, at *2 (D.N.J. Nov. 17, 2025).

61. An "unaccompanied alien child," (also referred to as an "unaccompanied child" or "unaccompanied minor") is defined by statute as one who has no lawful immigration status, is under age 18, and with respect to whom there is no parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. § 279(g).

62. When unaccompanied children are encountered by immigration officials, the TVPRA directs special treatment given their status as unaccompanied children. *See generally* 8 U.S.C. § 1232. As relevant to this case, ORR (which is part of the U.S. Department of Health and Human Services), and not ICE, is the entity responsible for caring for such children. *See generally id.*

63. Section 1232 further requires that ORR place unaccompanied children in "the least restrictive setting that is in the best interest of the child," taking into account danger to self, danger to community, and risk of flight. 8 U.S.C. § 1232(c)(2)(A) (incorporating 6 U.S.C. § 279(b)(2), which requires ORR to "ensure" that under such custody determinations children are likely to appear for immigration proceedings and are unlikely to pose a danger to themselves or others).

ORR's options for releasing unaccompanied children from custody include placement with family or another sponsor.

64. Once a person has been designated an unaccompanied child and detained pursuant to § 1232 they cannot be subject to § 1225 detention, even after they turn 18. Section 1232(c)(2)(B), which governs the release of unaccompanied children when they "age out" (i.e. turn 18 while still in ORR custody), requires that ICE "consider placement in the least restrictive setting available" and that these adults "shall be eligible for alternatives to detention." 8 U.S.C. § 1232(c)(2)(B); *see Ramirez v. U.S. Immigr. & Customs Enf't*, 338 F. Supp. 3d 1, 28 (D.D.C. 2018) (rejecting argument that unaccompanied minor aging out of ORR is not entitled to consideration under § 1232(c)(2)(B), despite the government's position that she was subject to mandatory detention under § 235, and explaining "Nothing in the text or context supports Defendants' argument that only a subset of former unaccompanied minors who were transferred to DHS custody are entitled to consideration under 8 U.S.C. § 1232(c)(2)(B)").

65. This TVPRA release standard is plainly inconsistent with mandatory detention under § 1225(b). This inconsistency demonstrates Congress' clear intent to exclude former unaccompanied children from § 1225. Section 1232(c)(2) would be rendered a nullity if these former unaccompanied children were subject to mandatory detention when they became adults. The more general § 1225 provision,

which predated the TVPRA, is displaced by the more specific. *See Morton v. Mancari*, 417 U.S. 535, 550–51 (1974) ("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.").

66. Thus, even if *Yajure Hurtado* were correct that generally all "applicants for admission" are subject to no-bond detention under § 1225(b), and even if the child was initially treated as an "applicant for admission," Congress provided that the TVPRA supplants that scheme once they are transferred to ORR, processed under that statute, and eventually released from ORR. *See Torres v. Wamsley*, 2025 WL 2855379, at *3–5 (W.D. Wash. Oct. 8, 2025); *R.D.T.M. v. Wofford*, 2025 WL 2686866, at *4 (E.D. Cal. Sept. 18, 2025); *Lopez v. Sessions*, 2018 WL 2932726, at *6 (S.D.N.Y. June 12, 2018).

III. Respondents' Re-Detention of Noncitizens Like Petitioner Without Any Pre- or Post-Deprivation Process Violates the Constitution

67. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This fundamental due process protection applies to all noncitizens within the United States, including both

deportable and inadmissible noncitizens. *See id.* at 693; *Plyler v. Doe*, 457 U.S. 202, 212 (1982).

68. Procedural due process protects noncitizens against deprivation of liberty without adequate notice and the opportunity to be heard. *A.A.R.P. v. Trump*, 605 U.S. 91, 95-96(2025); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In determining the necessary procedural protections under the Fifth Amendment, courts apply the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Black v. Decker*, 103 F.4th 133, 147-48 (2d Cir. 2024); *Gayle v. Warden Monmouth Cty. Corr. Facility*, 12 F. 4th 321, 331 (3d Cir. 2021); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 39-40 (1st Cir. 2019); *Velasco Lopez*, 978 F.3d at 851 (all quoting *Mathews*, 424 U.S. at 335); *Zumba*, 2025 WL 2753496 at *10 (applying *Mathews* in a case raising similar claims). Here, the BIA's interpretation deprives Petitioner of his liberty without any individualized process to

determine whether such detention is necessary to prevent flight risk or danger to the community, and violates due process.

69. First, the "importance and fundamental nature" of an individual's liberty interest is well-established. *United States v. Salerno*, 481 U.S. 739, 750 (1987); *see also Ashley*, 288 F. Supp. at 670 ("[F]reedom from confinement is a liberty interest of the highest constitutional import."). Where noncitizens have been deprived of their liberty by official government action placing them in immigration detention, this factor "weighs heavily" in a petitioner's favor. *Bethancourt Soto*, 2025 WL 2976572 at *8; *accord Zumba*, 2025 WL 2753496 at *10.

70. Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be "on any calculus, substantial," observing that the petitioner, "could not maintain employment or see his family or friends or others outside normal visiting hours. The use of a cell phone was prohibited, and he had no access to the internet or email and limited access to the telephone." 978 F.3d at 851-52. Similarly, the First Circuit found a substantial private liberty interest for the petitioner in *Hernandez-Lara*, noting that the petitioner there was incarcerated "alongside criminal inmates" at a jail where "she was separated from her fiancé and unable to maintain her employment." *Hernandez-Lara*, 10 F.4th at 28.

71. Second, absent an individualized hearing, noncitizens like Petitioner will be detained without any pre- or post-deprivation process. *See Contreras*

Maldonado, 2025 WL 2985256, at *5; *J.U. v. Maldonado*, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025). Therefore, they will be detained despite not being a danger to the community or a flight risk, because there is no mechanism to determine whether their detention is necessary. *See, e.g.*, *Bethancourt Soto*, 2025 WL 2976572, at *8 (the second Mathews factor weighed in petitioner's favor where he was "*erroneously* detained under the mandatory detention provisions of § 1225, without an opportunity for a bond hearing" and where there was no suggestion that he presented any risk of flight or danger); *Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154, -- F. Supp. 3d --, at *8 (D. Minn. May 21, 2025) (noting that lack of consideration of "individualized or particularized facts . . . increases the potential for erroneous deprivation of individuals' private rights"); *Ashley*, 28 F. Supp. 2d at 670 (finding a procedural due process violation because "the Government has not proved that Petitioner presents an identified and articulable threat to an individual or the community so as to justify his continued detention"). A bond hearing would have significant value because it is designed to assess the individualized facts of each case and determine whether less restrictive measures can fulfill the same goals.

72. Finally, the burden on the government of holding a bond hearing for Petitioner does not outweigh the liberty interest at stake. To the contrary, the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 854; *see also*

Hernandez-Lara, 10 F.4th at 33 (noting that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention"). Additionally, "unnecessary detention imposes substantial societal costs . . . Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33.

IV. The Appropriate Remedy for These Statutory and Constitutional Violations is Immediate Release

73. District courts throughout the country have found that the appropriate remedy for similarly-situated petitioners who Respondents erroneously insist are detained under INA § 1225(b) is immediate release. *Tinoco Pineda v. Noem*, 2025 WL 3471418, at *6 (W.D. Tex. Dec. 2, 2025) ("Because Petitioner cannot be detained under § 1225(b), the remaining option is § 1226. Respondents do not claim that Petitioner's current detention is under § 1226. In fact, they assert that the only relief available to her is release from custody. As such, the Court sees no reason to consider' § 1226 as a basis for Petitioner's current detention.") (citation and internal quotation marks omitted); *Alejandro v. Olson*, 2025 WL 2896348, at *9 (S.D. Ind. Oct. 11, 2025) ("Given that Respondents do not assert any other [statutory] basis for Mr. Alejandro's detention and do not argue that he presents a flight risk or danger, the appropriate remedy is his immediate release"); *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1119 (E.D. Cal. 2025); *see also Vadel v. Lowe*, 2025 WL 3772059, at *7

(M.D. Pa. Dec. 31, 2025); *Ramirez-Montoya v. Rose*, 2025 WL 3709045, at *6 (M.D. Pa. Dec. 22, 2025); *Guaman Lliguicota v. Cabezas*, 2025 WL 3496300, at *2 (D.N.J. Dec. 5, 2025); *Gonzalez Mateo v. Noem*, 2025 WL 3499062, at *7 (W.D. Ky. Dec. 5, 2025); *Morocho v. Jamison*, 2025 WL 3296300, at *3 (E.D. Pa. Nov. 26, 2025); *Singh v. Lewis*, 2025 WL 3298080, at *6 (W.D. Ky. Nov. 26, 2025); *Aguilar v. Bondi*, 2025 WL 3471417, at *6 (W.D. Tex. Nov. 26, 2025); *Bethancourt Soto*, 2025 WL 2976572, at *9; *Martinez v. Hyde*, 792 F. Supp. 3d at 223 n. 23.

74. Additionally, district courts have found that the appropriate remedy for similarly situated petitioners who are detained unlawfully under the INA, TVPRA and Fifth Amendment is release if the government cannot immediately prove flight risk and danger by clear and convincing evidence. *Vasquez Chinchilla v. De Anda-Ybarra*, 2025 WL 3268459, at *11 (W.D. Tex. Nov. 24, 2025) (the government's mandatory detention under 8 U.S.C. § 1225(b)(2) of a designated unaccompanied minor who had entered in 2021 constituted a Fifth Amendment Due Process violation which required the government to immediately justify his detention by proving flight risk or dangerousness by clear and convincing evidence at a bond hearing or release the petitioner); *Garcia Sandoval*, 2025 WL 3204746, at *2 (ordering immediate release to remedy TVPRA and due process violations.

V. Alternatively, § 1226(a) and Due Process Require that the Government Prove by Clear and Convincing Evidence that Petitioner's Continued Detention is Warranted

A. 8 U.S.C. § 1226(a) Requires that the Government Bear the Burden of Proving that Petitioner Is Not Entitled to Release on Bond.

74. As discussed above, the general "discretionary" immigration detention statute, 8 U.S.C. § 1226(a), enables noncitizens to seek release on bond from an IJ.

75. Section 1226(a) of title 8 of the United States Code provides:

> On a warrant issued by the Attorney General, a[] [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
>
> (1) may continue to detain the arrested [noncitizen]; and
>
> (2) may release the [noncitizen] on—
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole; but
>
> (3) may not provide the [noncitizen] with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the [noncitizen] is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

76. The BIA held in 1976 that a noncitizen "generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk." *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976) (internal citations omitted). Subsequent agency decisions held that "an assessment of the [noncitizen]'s danger to property or persons is a relevant consideration" in determining whether release on bond is appropriate. *Matter of*

Adeniji, 22 I&N Dec. 1102, 1103 (BIA 1999). Under the BIA's current interpretation of § 1226(a), a noncitizen in DHS custody "must establish to the satisfaction of the Immigration Judge" that he is not a danger, flight risk, or threat to national security for bond to be set. *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006). This standard is equivalent to a preponderance of the evidence standard. *Matter of Locicero*, 11 I&N Dec. 805, 808 (BIA 1966); *Matter of Barreiros*, 10 I&N Dec. 536, 536-37 (BIA 1964).

77. Although 8 U.S.C. § 1226(a) is silent as to which party carries the burden of proof, the statutory context and legislative history of that provision demonstrate that DHS properly bears the burden of justifying a noncitizen's continued detention, and *Matter of Guerra* is an impermissible interpretation of the statute. Placing the burden on DHS instead of the Petitioner is required for two reasons:

78. First, had Congress wanted noncitizens to bear the burden of proof in bond hearings pursuant to 8 U.S.C. § 1226(a) it would have expressly said so—as it did in another subsection of § 1226. *See* § 1226(c)(2) ("The Attorney General may release a[] [noncitizen]" subject to mandatory detention if release is (1) "necessary to provide protection to a witness . . ." and (2) "*the [noncitizen] satisfies the Attorney General* that the [noncitizen] will not pose a danger to the safety of other person or of property and is likely to appear for any scheduled proceedings") (emphasis

added).

79. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Nken v. Holder*, 556 U.S. 418, 430 (2009) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987)). This is "particularly true" in instances—like here—when Congress enacts a statute "as part of a unified overhaul" of the prior law. *Id.* at 430-31. Congress enacted all of § 1226 at the same time, in 1996. *See Demore*, 538 U.S. at 521 (describing "wholesale reform" of immigration laws as including enactment of § 1226). Nonetheless, § 1226(a) is silent as to the burden of proof, while § 1226(c)(2) squarely places the burden on noncitizens to establish that their release is proper. Congress' failure to expressly require noncitizens to carry the burden in bond hearings under § 1226(a) when it overhauled the INA indicates that placing the burden on non-criminal detained noncitizens contravenes congressional intent.[5]

[5] *Jennings* does not foreclose Petitioner's argument that DHS should bear the burden under §1226(a). The Court was not squarely presented with this issue. *See generally Jennings*, 138 S. Ct. 830. Rather, the Court's analysis was limited to whether the canon of constitutional avoidance supported an interpretation of § 1226(a) requiring periodic bond hearings every six months at which DHS carried the burden by clear and convincing evidence. 138 S.Ct. at 847-48. Petitioner does not argue that a proper reading of the statute requires a clear and convincing evidentiary standard, merely that Congress intended to place the burden on the government. As discussed *infra*, Petitioner's argument that a specific evidentiary standard applies in § 1226(a) hearings is rooted in due process, not statutory interpretation.

80. Second, maxims of statutory construction dictate that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). That canon applies here: Congress, in replacing 8 U.S.C. § 1252(a)(1) with § 1226(a), made no meaningful changes to the language of the original statute and thus preserved the presumption against detention that existed at the time. *See Patel*, 15 I&N Dec. at 666 (articulating that an immigrant "generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security or that he is a poor bail risk") (internal citations omitted).

81. Former § 1252(a)(1) governed the detention of deportable immigrants prior to § 1226(a).[6] Before the enactment of § 1226 and while § 1252(a)(1) was in effect, the BIA routinely held that noncitizens detained pursuant to § 1252(a) benefited from a presumption against detention during immigration proceedings. *See*

[6] Former 8 U.S.C. § 1252(a)(1) read: "Pending a determination of deportability in the case of any [noncitizen] as provided in subsection (b) of this section, such [noncitizen] may, upon warrant of the Attorney General, be arrested and taken into custody. Any such [noncitizen] taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody or (2) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (3) be released on conditional parole." Immigration and Nationality Act of 1952, Pub. L. No. 414, § 242(a), 66 Stat. 208, 209 (1952).

Patel, 15 I&N Dec. at 666. The BIA maintained this presumption in several precedential decisions after *Patel*. *See, e.g.*, *Matter of Andrade*, 19 I&N Dec. 488, 489 (BIA 1987); *Matter of Spiliopoulos*, 16 I&N Dec. 561, 563 (BIA 1978).

82. When Congress preserved the language of former § 1252(a)(1) in re-enacting it as § 1226(a), it presumably adopted the BIA's "administrative [] interpretation" of the statute and thereby *Patel*'s presumption against detention during removal proceedings. *Lorillard*, 434 U.S. at 580. Notably, both statutes are silent with respect to the burden of proof. *Compare* former § 1252(a)(1) *with* § 1226(a). As such, the agency's requirement that Petitioner carry the burden of proof in his bond hearing pursuant to § 1226(a) is contrary to the statute. *See Hulke*, 572 F. Supp.3d at 600-601.

B. Due Process Requires that the Government Bear the Burden of Proof by Clear and Convincing Evidence that Petitioner's Continued Detention is Justified

83. The Supreme Court has repeatedly recognized that civil detention must be carefully limited to avoid due process concerns. *See, e.g.*, *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997) (upholding civil commitment of certain sex offenders but requiring "strict procedural safeguards" including a right to a jury trial and proof beyond a reasonable doubt); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more

substantial than mere loss of money.") (citation and quotation marks omitted); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action"); *Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection"); *see also United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."). Given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers to bear the burden of proof to justify that detention. *See e.g., Salerno*, 481 U.S. at 751 (affirming the legality of pre-trial detention where burden of proof was on the government); *see also Foucha*, 504 U.S. at 81-82, 86 (holding unconstitutional a state civil insanity detention "statute that place[d] the burden on the detainee to prove that he is not dangerous"). It is improper to ask an individual to "share equally with society the risk of error" where the individual's interest is of "such weight and gravity." *Addington*, 441 U.S. at 427.

84. Moreover, the government must meet a heightened standard of proof and establish by clear and convincing evidence that its interest in preventive detention outweighs an "individual's strong interest in liberty." *Salerno*, 481 U.S. at

751. "Increasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate commitments will be ordered." *Addington*, 441 U.S. at 427. In *Addington*, the Court concluded that the state's use of civil detention to protect society from an allegedly dangerous individual with mental illness could not outweigh his right to liberty unless the state showed by at least clear and convincing evidence that detention was necessary. *Id.* at 433.

85. Although the Supreme Court in *Jennings* held that the statutory text of § 1226(a) does not require that DHS "prove by clear and convincing evidence that . . . continued detention is necessary" in immigration bond hearings, it left open the question of what procedural protections are constitutionally mandated. *Jennings*, 138 S. Ct. at 847; *see, e.g.*, *Hernandez-Lara*, 10 F.4th at 27 (noting that in *Jennings*, "[t]he Court left for another day, however, the constitutional question now before us: Whether the Due Process clause of the Fifth Amendment entitles a noncitizen detained pursuant to section 1226(a) to a bond hearing at which the government bears the burden of proving by clear and convincing evidence that the noncitizen is dangerous or a flight risk"); *Hernandez v. Decker*, 2018 WL 3579108, at *1 (S.D.N.Y. July 25, 2018) ("[B]ecause the *Jennings* majority and dissent were focused on whether the statutes required bond hearings, declining to reach the constitutional question at issue here, the Court is unpersuaded that *Jennings* has any

bearing on the appropriate procedures consistent with due process [in an immigration bond hearing].").

86. As discussed above, courts apply the *Mathew v. Eldridge* balancing test to determine the proper procedure to protect a detained noncitizen's procedural due process rights under the Fifth Amendment. *Gayle*, 12 F. 4th at 331. Each of the *Mathews* factors weighs in favor of allocating the burden to the DHS at Diego's § 1226(a) bond hearing.

87. Again, the "importance and fundamental nature" of an individual's liberty interest is well-established. *See Salerno*, 481 U.S. at 750. When "such a severe deprivation is at issue, the Government must bear the burden of proof." *Gayle*, 12 F.4th at 332.

88. Second, the risk that a noncitizen will be erroneously deprived of his freedom is significant under current bond procedures. People like Diego who seek bond pursuant to § 1226(a) must provide evidence to the IJ addressing a number of specified factors. *See Guerra*, 24 I&N Dec. at 40 (listing required evidence including criminal and immigration records, address history, length of residence, and family ties). Requiring detained individuals to obtain this evidence—particularly records from other government agencies—is extremely onerous. Barriers such as indigence, language and cultural barriers, limited education, and mental health issues often associated with past persecution or abuse complicate the ability to obtain such

records. Moreover, the mere fact of detention, often in county jails or for-profit prisons located miles from an individual's community, presents a significant obstacle to accessing the outside world. *See Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013) (noting that people in immigration detention "have little ability to collect evidence").

89. As the Second Circuit noted, "the procedures underpinning [petitioner's] lengthy incarceration markedly increased the risk of error," because the immigration judge is empowered to draw adverse inferences against noncitizens in the face of any evidentiary gaps, creating a situation where the petitioner "was neither a flight risk nor a danger to the community but was unable to prove that was the case." *Velasco Lopez*, 978 F.3d at 852. Similarly, the First Circuit found that "proving a negative (especially a lack of danger) can often be more difficult than proving a cause for concern." *Hernandez-Lara*, 10 F.4th at 31; *see also L.G. v. Choate*, 744 F. Supp. 3d 1172, 1183-84 (D. Colo. 2024).

90. Third, requiring that DHS bear the burden of establishing by clear and convincing evidence that a noncitizen is a danger or flight risk—does not meaningfully prejudice the government's interest in mitigating danger and risk of flight during proceedings. *See Zadvydas*, 533 U.S. at 690. DHS can access the records of other federal agencies and local law enforcement. In fact, it already regularly obtains such information, as it must establish that noncitizens are

deportable by clear and convincing evidence. *See* 8 U.S.C. § 1229a(c)(3) (outlining criminal records permissible to establish deportability); *see also Velasco Lopez*, 978 F.3d at 853 ("In making the relevant inquiry, the Government had substantial resources to deploy. Those resources include computerized access to numerous databases and to information collected by DHS, DOJ, and the FBI, as well as information in the hands of state and local authorities."); *J.G. v. Warden, Irwin C'ty Detention Center*, 501 F. Supp. 3d 1331, 1337-38 (M.D. Ga. 2020).

91. Indeed, again, the government's interest supports shifting the burden, because it has "a strong interest in erroneous deprivations of liberty. Incarceration that serves no legitimate purpose wastes taxpayers' money and hinders judicial efficiency." *J.G.*, 501 F. Supp. 3d at 1340. In this case, the government is not prejudiced in bearing the burden at Diego's bond hearing and, instead, has an interest in ensuring that Diego is not detained unnecessarily. Any interest the government has in placing the burden on Petitioner is far outweighed by Diego's substantial liberty interest and the high risk of error were he to carry the burden.

92. Therefore, if the Court does not order Diego released, he should be provided with a bond hearing where the government bears the burden of demonstrating that he is a flight risk or danger to the community by "clear and convincing evidence." *Velasco Lopez*, 978 F.3d at 857; *German Santos*, 965 F.3d at 214 (holding the DHS bears the burden of establishing danger or flight risk by clear

and convincing evidence in § 1226(c) bond hearings); *Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 224 (3d Cir. 2018)[7] (holding the government to a clear and convincing standard in immigration bond hearings "[b]ecause it is improper to ask the [noncitizen] to 'share equally with society the risk of error when the possible injury to the individual'—deprivation of liberty—is so significant, a clear and convincing evidence standard of proof provides the appropriate level of procedural protection").[8] As other courts have held, such a burden-shifted bond

[7] *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022), abrogated *Guerrero-Sanchez*'s holding that § 1231(a)(6) requires a bond hearing after six months as a matter of statutory construction. However, it left open the constitutional question of what procedures due process requires, and therefore did not call into question the Third Circuit's due process analysis of the appropriate allocation of the burden of proof when a hearing is necessary. *Arteaga-Martinez*, 596 U.S. at 583; *cf. German Santos*, 965 F.3d at 210 (holding that the constitutional reasoning of prior Third Circuit cases remains binding despite the abrogation of those cases' statutory holdings).

[8] The Third Circuit's decision in *Borbot v. Warden Hudson County Correctional Facility* is not to the contrary because it did not address the question of whether the burden allocation in § 1226(a) is unconstitutional, and the constitutionality of the burden was not raised or briefed by the petitioner in the case. 906 F.3d 274 (3d Cir. 2018). In *Borbot*, the Third Circuit declined to order a second § 1226(a) bond hearing in a case where the petitioner raised a due process claim based exclusively on the length of his detention and did not challenge the constitutionality of the burden allocation in his initial bond hearing under § 1226(a). *Id.* at 276-77 ("The duration of *Borbot*'s detention is the sole basis for his due process challenge."). Accordingly, the Third Circuit in *Borbot* had no opportunity to consider what due process requires in light of the Supreme Court's extensive civil confinement and pre-trial detention jurisprudence, apply the *Mathews v. Eldridge* balancing test, or otherwise consider the claims raised here. Therefore, other Courts have found that *Borbot* does not foreclose Petitioner's arguments. *Hernandez-Lara*, 10 F.4th at 34-35.

hearing is particularly appropriate as a remedy for re-detention without pre- or post-deprivation process. *Servin Espinoza v. Noem*, 2025 WL 3543646, at *5 (W.D. Tex. Dec. 10, 2024); *Escobar-Arauz v. Noem*, 2025 WL 354648, at *4 (W.D. Tex. Dec. 10, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *13 (W.D. Tex. Sept. 22, 2025); *Salazar v. Dedos*, No. 1:25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025).

93. Finally, this Court has the power to hold the bond hearing itself as a "legal and logical concomitant" of its habeas jurisdiction. *Leslie v. Holder*, 865 F. Supp. 2d 627, 634-35 (M.D. Pa. 2012). Courts have exercised this authority, "particularly where delay risks perpetuating the constitutional injury" and immigration court dockets are "exploding." *Centeno-Martinez v. Jamison*, 25-3593, 2025 WL 2157711, at *3 (E.D. Pa. Nov. 12, 2025); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 407 (E.D.N.Y. 2025). Otherwise, immigration judges who are not used to applying the constitutionally-required burden of proof discussed above may not do so correctly, necessitating further proceedings before this Court. *See, e.g.*, *Saltos Chiguano v. Lowe*, No. 1:24-cv-2210, 2025 WL 3187161, at *4 (M.D. Pa. Nov. 14, 2025) (deciding to hold a hearing before the district court after two different IJs failed to apply the appropriate burden of proof).

VI. Prolonged Mandatory Detention Without a Bond Hearing Violates Due Process

94. Even if Respondents could lawfully re-detain Petitioner without process under § 1225(b)(2), Petitioner's prolonged detention without a bond hearing pursuant to § 1225(b) violates due process.

95. As discussed above, even assuming *arguendo* that Petitioner's detention is not governed by § 1226(a), Petitioner is still protected under the Due Process Clause from unlawful or arbitrary personal restraint, detention or imprisonment. *Zadvydas*, 533 U.S. at 690. While the Supreme Court upheld the constitutionality of mandatory detention without a bond hearing under 8 U.S.C. § 1226(c) against a facial challenge in *Demore v. Kim*, Justice Kennedy's concurrence explained that a noncitizen "could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." *Id.* at 532 (Kennedy, J., concurring).

96. After *Zadvydas* and *Demore*, courts around the country, including the Third Circuit, applied the canon of constitutional avoidance and held that these statutes required a bond hearing when detention became prolonged. *See Guerrero-Sanchez*, 905 F.3d at 226 (requiring bond hearings after six months of detention under § 1231(a)(6)), *abrogated by Arteaga-Martinez*, 596 U.S. at 573 ; *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (requiring bond hearings after six months of detention under § 1225(b)); *Chavez-Alvarez v. Warden York C'ty Prison*,

783 F.3d 469, 474-75 (3d Cir. 2015) (requiring bond hearings when detention under § 1226(c) became unreasonable), abrogated in part by *Jennings*, 583 U.S. at 281; *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232-33 (3d Cir. 2011) (same), abrogated in part by *Jennings*, 583 U.S. at 281.

97. In 2018, the Supreme Court held that, as a matter of statutory construction, sections 1225(b) and 1226(c) mandate detention for the length of proceedings and do not require bond hearings. *Jennings*, 138 S. Ct. at 844. *Jennings*, however, did not address whether unreasonably prolonged detention without a bond hearing may violate due process, and left it to the lower courts to address the issue in the first instance. *Id.* at 312.

98. Following *Jennings*, the Third Circuit held that its constitutional analysis of prolonged mandatory immigration detention remained undisturbed and reaffirmed its conclusion that the Constitution requires bond hearings when "detention becomes unreasonable." *German Santos*, 965 F.3d at 210 . The court ruled that its decisions in *Chavez-Alvarez* and *Diop* remain good law for as-applied constitutional challenges, with *Jennings* abrogating those cases only to the extent they read the statute to implicitly limit the length of detention without a bond hearing to "a reasonable amount of time." *Id.*

99. Guided by the analysis in *Diop* and *Chavez-Alvarez*, the Third Circuit identified the following four factors to consider in determining whether a

noncitizen's detention has become unreasonably prolonged: 1) the length of detention; 2) whether detention is likely to continue; 3) the reasons detention has been prolonged (including errors or bad faith by either party); 4) and whether the conditions of confinement are similar to those imposed as criminal punishment. *Id.* at 211.

100. If detention without a bond hearing has become unreasonably prolonged, the noncitizen is entitled to a bond hearing. At that bond hearing, due process requires certain minimal protections to ensure that a noncitizen's detention is warranted: the government must bear the burden of proof by clear and convincing evidence to justify continued detention, taking into consideration available alternatives to detention and the noncitizen's ability to pay a bond. *Id.* at 213-214.

101. *German Santos*'s holding applies in the context of § 1225(b) detention, because both § 1225(b) and § 1226(c) deprive noncitizens of their liberty without an individualized determination about whether continued detention is necessary. *See Akhmadjanov v. Oddo*, No. 3:25-35, 2025 WL 660663, at *4 (W.D. Pa. Feb. 28, 2025) (applying *German Santos* to prolonged detention under § 1225(b)); *A.L. v. Oddo*, 761 F. Supp. 3d 822, 826 (W.D. Pa. 2025) (same); *Pierre v. Doll*, 350 F. Supp. 3d 327, 332 (M.D. Pa. 2018) (same).

102. In sum, prolonged detention without a bond hearing violates due process, regardless of the statutory basis for the detention. Courts in this circuit apply

a multi-factor test to determine whether detention has become unreasonable and a bond hearing is necessary. *German Santos*, 965 F.3d at 211.

FIRST CLAIM FOR RELIEF
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

103. Petitioner re-alleges and incorporates by reference the above paragraphs.

104. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner, who entered without inspection in 2021 and has been living in the United States after being released from ORR custody as an unaccompanied child.

105. Further, Diego was treated as an unaccompanied child pursuant to the TVPRA and transferred to ORR custody. Therefore, he was never treated as an "arriving alien" or subject to the "entry fiction" that comes with parole, "whereby noncitizens are physically permitted to enter the country but are nonetheless treated for legal purposes as if stopped at the border." *Diaz Martinez*, 792 F. Supp. 3d at 215-16 (quoting *Dep't of Homeland Sec. v. Thuraissigam*, 591 U.S. 103, 139 (2020)). Furthermore, § 1225(b)(2) does not apply to people who were designated as unaccompanied children and subject to the detention and release procedures in 8 U.S.C. § 1232. Therefore, Diego's case falls squarely within the scope of 8 U.S.C. § 1226(a).

106. Petitioner is detained under § 1226(a) and is eligible for release on bond. Respondents' unlawful application of § 1225(b)(2) to Petitioner violates the INA. As discussed above, the appropriate remedy is ordering his immediate release. *Santana-Rivas v. Warden Clinton C'ty*, 2025 WL 3522932, at *13 (M.D. Pa. Nov. 13, 2025) ("The only just outcome, therefore, given the totality of the circumstances, would be to find that Petitioner is detained pursuant to § 1226(a); order Petitioner's immediate release; enjoin the government from re-detaining Petitioner under § 1225; and compel the government to abide by the procedural standards under the statutory provisions and regulations applicable to an individual released on bond under § 1226(a)."), *R&R adopted* 2025 WL 3513152; *see also, e.g.*, *Guaman Lliguicota*, 2025 WL 3496300, at *2; *Morocho*, 2025 WL 3296300, at *3; *Garcia Sandoval*, 2025 WL 3204746, at *2. In the alternative, the Court should conduct or order a bond hearing and hold that due process requires the Government to bear the burden of showing that Diego is a flight risk or danger to the community in order to justify continued detention. *See Alvarez Ortiz v. Freden*, 2025 WL 3085032, at *15 (W.D.N.Y. Nov. 4, 2025).

SECOND CLAIM FOR RELIEF
Violation of the Fifth Amendment Due Process Clause
Procedural Due Process: Re-Detention Without Adequate Procedural Protections

107. Petitioner re-alleges and incorporates by reference the above paragraphs.

108. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Courts apply the *Mathews v. Eldridge* balancing test to determine what procedures the due process clause requires. *Gayle*, 12 F.4th at 331.

109. Diego's procedural due process rights are violated in two ways. First, he received no pre-deprivation process whatsoever. Second, even assuming his initial arrest were proper, he is being held without a bond hearing.

110. The first factor is the private interest that will be affected by the official action. *Id.* Here, the deprivation of Petitioner's liberty is a particularly weighty interest. Diego is 21 years old and entered this country as an unaccompanied child at the age of 17. ORR previously released Diego to a sponsor pursuant to 8 U.S.C. § 1232(c)(2)(A) when he was 17 years old. That release hinged upon a determination by the government that Diego did not pose a danger or flight risk. *See* § 1232(c)(2)(A); 6 U.S.C. § 279(b)(2).

111. He was detained at the Camden County Correctional Center for almost two years, and was ultimately acquitted of the charges against him at trial. Then immediately after release from his lengthy pre-trial detention, he was detained by ICE with no notice, opportunity to contest his re-detention, or any process whatsoever.

112. He has now been detained in ICE custody for over ten months without a bond hearing while applying for relief before the Elizabeth Immigration Court and the Board of Immigration Appeals. He will remain detained for a significant period as he appeals the denial of his claims by an immigration judge who did not preside over his case and whose findings contradicted those of his expert witness who found it more likely than not that he would be persecuted and tortured if returned to El Salvador. Ex. E, at 3-4. Given his age, length of detention, lack of foreseeable end to detention, and conditions of detention, he has a particularly heightened liberty interest.

113. The second factor is the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional safeguards. *Id.* The BIA's interpretation of § 1225(b)(2) does not permit any individualized determination of whether detention during removal proceedings is necessary. *See Ashley*, 288 F. Supp. 2d at 670. A hearing at which the government bears the burden of proof by clear and convincing evidence would protect the substantial liberty interest at stake. *German Santos*, 965 F.3d at 213-14.

114. The final factor is the government's interest. *Gayle*, 12 F.4th at 331. The government has no legitimate interest in detaining Petitioner when detention is not necessary to ensure appearance at future hearings or protect the community, and less restrictive measures like a reasonable bond would serve those purposes.

Hernandez-Lara, 10 F.4th at 32-33; *see Ousman D. v. Decker*, 2020 WL 5587441, at *4 (D.N.J. Sept. 18, 2020) (holding that due process requires consideration of less restrictive alternatives to detention that would address the government's legitimate purpose). Therefore, the government does not have an interest in detaining Petitioner without any pre-deprivation process, and it certainly has no interest in detaining him without bond hearing that outweighs his substantial liberty interest in such an individualized determination.

115. Respondents' detention of Petitioner without any hearing to determine whether that detention is necessary violates procedural due process. The appropriate remedy is immediate release, *Contreras Maldonado*, 2025 WL 2985256, at *7, or a bond hearing at which the government bears the burden by clear and convincing evidence. *Lopez-Arevelo*, 2025 WL 2691828, at *13.

THIRD CLAIM FOR RELIEF
Violation of the Fifth Amendment Due Process Clause
Procedural Due Process: Prolonged Detention Without Adequate Procedural Protections

116. Petitioner re-alleges and incorporates by reference the above paragraphs.

117. Regardless of the statutory basis for detention, the Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. As discussed above, the Third Circuit's decision in *German Santos* lists four factors for courts to consider

when determining whether detention without procedural protections has become unconstitutionally prolonged. *German Santos*, 965 F.3d at 211; *see also A.L.*, 761 F.Supp.3d at 826.

118. The first *German Santos* factor, the length of detention, favors a bond hearing. *See* 965 F.3d at 211-12. Diego has been detained for 281 days, over nine months. Courts have repeatedly recognized that detention without a bond hearing becomes constitutionally-suspect after six months. *See Demore*, 538 U.S. at 529-30 (noting, in upholding § 1226(c) against a facial challenge, that detention usually lasts "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal"); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months."); *Chavez-Alvarez*, 783 F.3d at 476 (detention presumptively unreasonable if it lasts six months to a year); *Guerrero-Sanchez*, 905 F.3d at 226 (holding that individuals detained pursuant to 8 U.S.C. § 1231(a)(6) are "generally entitled to a bond hearing after six months"); *see also A.L.*, 761 F. Supp. at 826 (holding ten months' detention under § 1225(b) unreasonable); *Perez*, 2018 WL 3991497, at *5 (same). Diego detention has already substantially exceeded six months.

119. Second, Petitioner's "removal proceedings are unlikely to end soon," which "suggests that continued detention without a bond hearing is unreasonable."

German Santos, 965 F.3d at 211. Petitioner's detention will continue for many more months pending adjudication of his appeal before the BIA, which is not certain to result in a final agency decision. 8 C.F.R. § 1003.1(d)(4), (e)(5); *see also Matter of Patel*, 16 I&N Dec. 600 (BIA 1978) (discussing the possibility of remand to the IJ). The appeal process is a lengthy process that is impacted by heavy backlogs. According to EOIR adjudication statistics, in 2025 fiscal year the BIA completed 16,913 and had 160,098 pending appeals at the end of the second quarter.[9]

120. Diegohas filed a timely Notice of Appeal to the BIA. He is currently awaiting production of a transcript, issuance of a briefing schedule, and ultimately issuance of a decision on the merits of his appeal. Diego's 25-page IJ decision is an indication of the complexity of legal issues in his case. Ex. E. Finally, there is no guarantee that the BIA will reach a final decision in Diego's case without remanding for additional fact-findings or a new analysis. *See Chavez-Alvarez*, 783 F.3d at 478 (noting that it became clear by the time the BIA appeal was filed that it would take "a substantial amount of time"); *accord German Santos*, 965 F.3d at 212.

121. Third, Diego did not engage in dilatory tactics before the Immigration Judge and raised only good-faith challenges to his removal. *See German Santos*, 965 F.3d at 211. He complied with filing deadlines, did not request a continuance, and

[9] Executive Office for Immigration Review, Adjudication Statistics: Sll Appeals Filed, Completed, and Pending (Apr. 4, 2025), available at https://www.justice.gov/eoir/media/1344986/dl?inline.

accepted the earliest hearing dates offered by the court. Rather, the Immigration Court prolonged his detention by taking more than two months to issue a decision because the immigration judge went on leave shortly after his individual hearing. *See* Ex. D.

122. Finally, the conditions of Diego's confinement, particularly as the duration of detention increases, weigh strongly in favor of finding his detention to be unreasonable. *See Chavez-Alvarez*, 783 F.3d at 475-77. He was detained for nine months at the Moshannon Valley Processing Center. Notably, many district courts have found that "the conditions at Moshannon are penal in character." *Grigoryan v. Jamison*2025 WL 1257693, at *5 (E.D. Pa. Apr. 30, 2025) (citing *Rivas v. Oddo*, 2023 WL 4361140, at *1 (W.D. Pa. June 27, 2023); *Morgan v. Oddo*, 2025 WL 1134979, at *4–5 (W.D. Pa. Apr. 17, 2025); *Akhmadjanov*, 2025 WL 660663, at *5 (W.D. Pa. Feb. 28, 2025); and *Michelin v. Oddo*, 2023 WL 5044929, at *7 (W.D. Pa. Aug. 8, 2023)). Diego was recently transferred to FCI Lewisburg, a federal prison where he is detained "alongside convicted criminals." *See German Santos*, 965 F.3d at 213.

123. The reasonableness of detention is "highly fact-specific" and must be analyzed based on the totality of circumstances. *German Santos*, 965 F.3d at 210. Considering the length of Diego's detention, the likelihood that proceedings in his case will continue for a significant period of time, the absence of bad-faith actions

on his side, and the conditions of his confinement, Diego's further detention without a bond hearing is unconstitutional. *German Santos*, 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 475) (noting that detention "can still grow unreasonable even if the Government handles the removal proceedings reasonably").

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, the TVPRA and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

3) Issue a Writ of Habeas Corpus, order Petitioner's immediate release from custody, permanently enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1225(b)(2) and enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1226(a) absent constitutionally adequate pre-deprivation due process in which Respondents bear the burden of proving he presents a risk of flight or danger by clear and convincing evidence, even after consideration of alternatives to detention that could mitigate any risk that Diego's release would present;

4) In the alternative, hold a custody hearing in this Court at which Respondents must prove by clear and convincing evidence that Diego presents a risk

of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Diego's release would present;

5) In the alternative, order Petitioner's release from custody within 10 days unless Respondents schedule a hearing before an immigration judge at which, the government must establish by clear and convincing evidence that Diego presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Diego's release would present;

6) Award Petitioner his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

7) Grant such further relief as the Court deems just and proper.

Dated: January 29, 2026

Respectfully submitted,

/s/ Rebecca Hufstader

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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 29, 2026

Respectfully submitted,

/s/ Rachel Salazar, Esq.
Rachel Salazar
Pro Bono Counsel for Petitioner